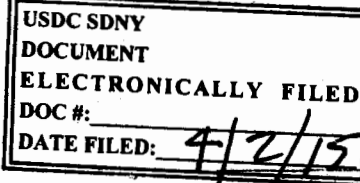


Kaplan, Y.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

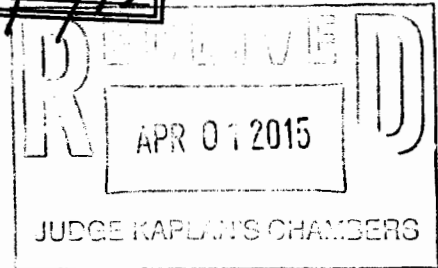
-----X  
UNITED STATES OF AMERICA,

Plaintiff,

v.

DEUTSCHE BANK, A.G.; DB U.S. FINANCIAL  
MARKETS HOLDING CORP.; DEUTSCHE  
BANK SECURITIES, INC.; BMY ACQUISITION  
CORP.; BMY ACQUISITION LLC; BMY  
STATUTORY TRUST; and FIRST UNION  
NATIONAL BANK, n/k/a WELLS FARGO BANK  
N.A., as trustee of BMY STATUTORY TRUST,

Defendants.  
-----X



**NOTICE OF DISMISSAL OF  
CERTAIN CLAIMS PURSUANT  
TO RULE 41(a)(1)(A)(i)**

ECF CASE

14 Civ. 9669 (LAK)

WHEREAS, plaintiff the United States of America filed its complaint in this action on  
December 8, 2014;

WHEREAS, none of the defendants has served an answer to the complaint or a motion  
for summary judgment;

WHEREAS, pursuant to Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, the  
plaintiff may file a notice of dismissal without order of Court prior to the service of an answer or  
motion for summary judgment;

WHEREAS, the United States desires to dismiss voluntarily a portion of the claims in the  
complaint: specifically, (i) all claims against defendants BMY Acquisition LLC, BMY Statutory  
Trust, and First Union National Bank, n/k/a/ Wells Fargo Bank N.A., as trustee of BMY

Statutory Trust, and (ii) the claims against defendant BMY Acquisition Corp. asserted in Counts II and III of the Complaint;

WHEREAS, for avoidance of doubt, the United States is not dismissing any claims asserted in the complaint against Deutsche Bank, A.G., DB U.S. Financial Markets Holdings Corp., and Deutsche Bank Securities, Inc.;

WHEREAS, for the further avoidance of doubt, the United States is not dismissing the claim against BMY Acquisition Corp. asserted in Count I of the Complaint;

WHEREAS, the Second Circuit formerly held that Rule 41 authorizes a party to dismiss only an entire civil action, and not individual claims or parties therein, *see Harvey Aluminum, Inc. v. Am. Cyanamid Co.*, 203 F.2d 105, 108 (2d Cir. 1953);

WHEREAS, the Second Circuit subsequently noted that *Harvey Aluminium* “has been criticized and is now against the weight of authority,” *Wakefield v. N. Telecom, Inc.*, 769 F.2d 109, 114 n.4 (2d Cir. 1985); and

WHEREAS, following the *Wakefield* decision, district court decisions in this district and elsewhere in the Second Circuit have concluded that the rule stated in *Harvey Aluminum* is no longer the law of the circuit and that a plaintiff may invoke Rule 41 to dismiss a subset of the claims asserted or parties named in a complaint. *See, e.g., In re AOL Time Warner Secs. & “ERISA” Litig.*, No. 02 Civ. 5575 (SWK), 03 Civ. 3902 (SWK), 2007 WL 2746818, at \*1 (S.D.N.Y. Sept. 20, 2007); *Mut. Ben. Life Ins. Co. in Rehab. v. Carol Mgmt. Corp.*, No. 93 CIV. 7991 (LAP), 1994 WL 570154, at \*1 (S.D.N.Y. Oct. 13, 1994); *General Foods Corp. v. Jay V. Zimmerman Co.*, No. 86 Civ. 2697 (KMW), 1990 WL 115714, at 2 & n.2 (S.D.N.Y. Aug. 7, 1990); *see also Blaize-Sampeur v. McDowell*, No. 05-CV-4275 (JFB) (ARL), 2007 WL 1958909,

at \*2-\*3 (E.D.N.Y. June 29, 2007) (citing District of Connecticut and Eastern District of New York cases, as well as *Mutual Benefit* and *General Foods*);

THEREFORE, PLEASE TAKE NOTICE that pursuant to Rule 41(a)(1)(A)(i), the United States hereby dismisses the following claims from its complaint in this action:

1. All claims against defendant BMY LLC;
2. All claims against defendant BMY Statutory Trust;
3. All claims against First Union National Bank, n/k/a Wells Fargo Bank N.A., as trustee of BMY Statutory Trust; and
4. The claims against defendant BMY Acquisition Corp. contained in Counts II and III of the Complaint;

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 41(a)(1)(B), the dismissal of these claims is without prejudice; and

PLEASE TAKE FURTHER NOTICE, for avoidance of doubt, that this notice does not affect the claims asserted in the Complaint against Deutsche Bank, A.G., DB U.S. Financial Markets Holdings Corp., and Deutsche Bank Securities, Inc., nor does it affect the claim asserted in Count I of the Complaint against BMY Acquisition Corp.

Dated: New York, New York  
April 1, 2015

Respectfully submitted,

PREET BHARARA  
United States Attorney

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          natasha.waglow@usdoj.gov

**SO ORDERED:**



**U.S.D.J.**

4/2/15

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